

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION **STATE OF ILLINOIS**
ILLINOIS COMMERCE COMMISSION

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In the Matter of)	
)	
Illinois Bell Telephone Company)	
)	98-0252
Application for Review of Alternative)	
regulation plan)	
)	
Illinois Bell Telephone Company)	
)	98-0335
Petition to rebalance Illinois Bell Telephone)	
Company's Carrier Access and Network)	
Access Line Rates)	
)	
Citizens Utility Board and)	
The People of the State of Illinois)	
(consol.))	
-vs-)	
Illinois Bell Telephone Company)	
)	00-0764
Verified Complaint for a Reduction in Illinois))	
Bell Telephone Company's Rates and Other))	
Relief)	
)	

CHIEF CLERK'S OFFICE

**BRIEF ON EXCEPTIONS AND EXCEPTIONS ON REOPENING
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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April 5, 2002

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The Staff of the Illinois Commerce Commission (hereafter the "Staff"), pursuant to Section 200.830 of the Rules of Practice before the Illinois Commerce Commission, 83 Ill. Admin. Code 200.830, as its Brief on Exceptions and Exceptions on Reopening herein, states as follows:

Exception No. 1 The Proposed Order Should Be Amended to Delete Specific Rejection of the Staff's Proposal Regarding Reseller Allocations

The Proposed Order correctly states that:

Staff supports the use of McLeod specific data to determine McLeod's credit allocation. With respect to other resellers, Staff states that AI should contact each carrier and obtain the number of small business customers, since it appears that only 30 carriers would need to be contacted. If the Commission believes that this is too burdensome, Staff suggests that AI be required to contact the five largest CLEC providers of resold business services in Illinois and develop a CLEC-based proxy based on the average of their customer demographics.

Proposed Order at 12.

The Proposed Order provides in relevant part, that:

McLeod has raised certain issues with respect to identifying reseller lines eligible for the credit. The Commission agrees with McLeod's that its credit should be based on the un rebutted carrier-specific data which it submitted. Several options were proffered by the parties on how to determine eligible business lines for resellers that did not provide their own data. In this instance the Commission agrees with AI that simplicity and ease of administration should be key controlling policy objectives. Based on the evidence in the record, the Commission agrees with the CLEC Coalition and concludes that 43% should be used as a proxy for reseller business customers with one-to-four lines. The Company stated that such a proxy would be simple to administer and, most importantly, would avoid any issue of disparate treatment. We note that use of a 43% proxy would not significantly change the amount of the credit that would be issued to retail customers. Consequently, and for reasons cited above, we reject Staff's alternatives.

Proposed Order at 14.

The Staff continues to believe that the best possible resolution of this issue would be for Ameritech to poll each carrier to determine the number of small business customers each serves. However, the Proposed Order's conclusion is relatively more convenient to administer than would be the case under the Staff's proposal, and appears likely to result in customers obtaining their credits more quickly. Thus, the Staff finds the Proposed Order's resolution to be an acceptable outcome. Accordingly, the Staff takes no substantive exception to it. Therefore, the Staff urges the Commission to amend the Proposed Order to eliminate reference to rejection of the Staff's proposed alternatives, as follows:

We note that use of a 43% proxy would not significantly change the amount of the credit that would be issued to retail customers. ~~Consequently, and for reasons cited above, we reject Staff's alternatives.~~

Exception No. 2 The Proposed Order Improperly Grants Ameritech's Motion to Strike

The Proposed Order finds, in relevant part, that:

The core question in deciding whether the Motion to Strike should or should not be granted is what is the proper scope of the re-opening proceedings. We disagree with the CLEC Coalition that we must, at this point, consider the issue of shared and common costs as it relates to UNEs in order to determine whether the Joint Proposal itself is fair, just and reasonable, and in the public interest. As indicated in the Merger Order, carriers purchasing UNEs will benefit from merger related savings through updated rates resulting from modification of TELRIC, shared and common costs. The re-opening proceeding was intended to address the treatment of merger savings and not as a proceeding in which UNE rate changes would be implemented. To do so would circumvent normal ratemaking processes. Whether the Joint Proposal is fair, just and reasonable may be decided separate and apart from merger savings as

they relate to the provisioning of UNEs. Therefore, we grant the Company's Motion to Strike.

...

By this decision, we are not changing our conclusion in the SBC/Ameritech Merger Order that merger savings ultimately should be reflected in updated UNE rates. The issue here is one of timing and scope. This reopened proceeding is not the appropriate context in which to address complex UNE pricing issues. We agree with AI, Staff and GCI/City that the one-time credit proposed for the CLECs is an appropriate interim measure and will not operate to deprive the CLECs of updated UNE prices in the future.

Proposed Order at 16.

The Staff finds itself in an unusual position with respect to this issue. As the Proposed Order correctly notes, "[the] Staff ... does not recommend that the Joint Proposal be modified to pass merger related savings to UNE purchasers through lower UNE rates. It maintains that this docket was reopened for consideration of the narrow issue of merger costs and savings." Proposed Order at 13. However, the Staff is also compelled to note that the Joint CLECs' attempt to introduce evidence regarding shared and common costs was proper, and the evidence should be taken into the record.

The Merger Order specifically found:

It is the ruling of this Commission that the net merger-related savings should be allocated to Ameritech Illinois' customers as follows:

(1) Carriers purchasing AI's UNEs, interconnection, and transport and termination services will benefit from merger-related savings through updated rates resulting from modification of its TELRIC, shared and common costs.

Merger Order at 149 (emphasis added).

The CLECs have, as the Proposed Order observes, argued that:

[T]he issue of shared and common costs is inextricably related to merger savings and the Joint Movants' merger savings proposal. ...[T]he Commission cannot evaluate the Joint Proposal in a vacuum, and ... while addressing the Joint Proposal the Commission also must consider the issue of merger savings as it relates to shared and common costs.

Proposed Order at 16.

The CLECs are perfectly correct on this point. It is impossible for the Commission to determine whether the Joint Proposal is fair, reasonable and adequate without comparing it to the allocation of merger costs and savings that would result if the Merger Order remained unaltered. It is, in turn, impossible to make that determination without reference to shared and common costs, since, as the Commission noted in the Merger Order, "[c]arriers purchasing ... UNEs, interconnection, and transport and termination services will benefit from merger-related savings through updated rates resulting from modification of [Ameritech's] TELRIC, shared and common costs." Merger Order at 149. It follows that the issues raised by the Joint CLECs are properly within the scope of the reopening and that evidence relating to shared and common costs is properly before the Commission. In consequence, the Motion to Strike should be denied.

The Commission will be called upon to rule on the general issue of how merger costs and savings are to be allocated. To do so, it may consider methods by which this can be accomplished other than the one advanced by the Joint Movants. It may ultimately reject the Joint Proposal, or modify it in some way.

The Staff notes, again, that while it supports the introduction of evidence regarding shared and common costs as being relevant, it does not recommend

that the Commission make adjustments to Ameritech's shared and common cost factor in this proceeding. The Proposed Order provides numerous findings and determinations of inadequacy regarding the nature and probative value -- as opposed to the admissibility -- of the evidence presented by the Joint CLECs. Those findings are correct. The Commission can and should reject the alternative case presented by the CLECs on that basis -- not on the basis of rejecting the evidence out of hand.

The Commission clearly has the full authority to adjust Ameritech's shared and common cost factor in this proceeding. To that extent, the Proposed Order is incorrect when it states that "[t]he issue [of whether shared and common costs are properly considered] here is one of ... scope." If the Commission elects to modify Ameritech's shared and common costs in this proceeding it can do so.

The Proposed Order, however, is correct when it states that this proceeding is not the proper time to consider Ameritech's shared and common costs.

In summary, evidence regarding shared and common costs is relevant, based on the language of the Merger Order itself. Likewise, the Commission may consider such evidence, and, if it deems it proper, adjust Ameritech's shared and common costs. The Commission should therefore reject the Proposed Order's recommendation that the Motion to Strike be granted, and yet nevertheless retain the conclusions of the Proposed Order that instead decline to accept the Joint CLECs' alternative proposal in this proceeding, leaving rate reductions to separate, future proceedings .

Consistent with this, the Staff recommends that the Proposed Order be amended as follows:

As an initial matter, we note that we do not make a practice of ruling upon motions related to the admissibility of evidence in our final orders. In this case, circumstances compel us to do so as we have directed the Administrative Law Judges and parties to resolve the matters raised in the Joint Motion on an expedited schedule. Accordingly, our ruling on the motion should not be deemed to impart any particular probative significance to the evidence that is the subject of the motion. We base our ruling purely on the rules of evidence.

The core question in deciding whether the Motion to Strike should or should not be granted is what is the proper scope of the re-opening proceedings. We disagree with the CLEC Coalition that we may, at this point, consider the issue of shared and common costs as it relates to UNEs in order to determine whether the Joint Proposal itself is fair, just and reasonable, and in the public interest. In other words, this issue is within the scope of the proceeding. As indicated in the Merger Order, carriers purchasing UNEs will benefit from merger related savings through updated rates resulting from modification of TELRIC, shared and common costs. The Joint Movants have attempted to frame the The re-opening proceeding was as one intended exclusively to address the treatment of merger savings and not as a proceeding in which UNE rate changes would be implemented. We, however, reject the position that evidence regarding shared and common costs is not relevant in this proceeding, since this Commission ruled in our *Merger Order* that shared and common costs would constitute one of the ways in which merger savings would be allocated to CLECs. Evidence probative of the issue is relevant in this proceeding specifically convened to determine whether we should modify our Merger Order's methodology for allocation and distribution of merger savings. The Motion to Strike is therefore denied.

That having been said, we decline to modify Ameritech's shared and common cost allocator in this proceeding. Were we to ~~To~~ do so, it would circumvent normal ratemaking processes. Whether the Joint Proposal is fair, just and reasonable may be decided separate and apart from merger savings as they relate to the provisioning of UNEs. Therefore, we grant the Company's Motion to Strike.

Further, the Commission declines even if it were to consider merger-related savings relative to UNEs, and their shared and common costs, it would be to import an Ameritech Indiana proposed shared and common cost study and impose that study on Ameritech Illinois, in this proceeding without some stated and proper evidentiary basis for doing so. We agree with the Company that the Commission cannot borrow rates or

their inputs from other states without a substantial evidentiary basis in the record. Here the evidentiary basis is wanting, although we specifically decline to rule on the admissibility of the Indiana study, were it to be introduced in subsequent proceedings. ~~The study sought to be used by the CLEC Coalition has been stricken from the record of the Indiana proceeding. Further, the type of study sought to be used by the CLEC Coalition is inappropriate as it contains Indiana state specific data. The CLEC Coalition recognizes the Ameritech Indiana shared and common cost study has limitations. The Commission rejects its use of what the CLEC Coalition call an "imperfect proxy."~~

~~By this decision, we~~ We are not changing our conclusion in the SBC/Ameritech Merger Order that merger savings ultimately ~~should~~ must be reflected in updated UNE rates resulting from modification of its TELRIC, shared and common costs. The issue here is one of timing. We decline, in this reopened proceeding, to address complex UNE pricing issues. We agree with AI, Staff and GCI/City that the one-time credit proposed for the CLECs is an appropriate interim measure and will not operate to deprive the CLECs of updated UNE prices in the future.

Exception No. 3 The Proposed Order Incorrectly Terminates Docket No. 01-0120, Rather than Docket No. 01-0128

Finding paragraph 7 of the Proposed Order provides that:

(7) as a result of the approval of the Joint Proposal, the tracking, reporting and auditing requirements applicable to merger savings as a result of the Commission's order in Docket 98-0555 are eliminated and Docket 01-0120 is hereby terminated;

Likewise, the corresponding Ordering paragraph provides that:

IT IS FURTHER ORDERED that the tracking, reporting and auditing requirements applicable to merger savings as a result of the Commission's Order in Docket 98-0555 are eliminated and Docket 01-0120 is hereby terminated

Proposed Order at 17

This appears to contain a scrivener's error. Docket No. 01-0120 is entitled Illinois Bell Telephone Company, AT&T Communications of Illinois, Inc., TCG Illinois, TCG Chicago, TCG St. Louis, CoreComm Illinois, Inc., WorldCom, Inc.,

McLeodUSA Telecommunications Services, Inc., XO Illinois, Inc., Northpoint Communications, Inc., Rhythms Netconnection and Rhythms Links, Inc., Sprint Communications L.P., Focal Communications Corporation of Illinois, and Gabriel Communications of Illinois, Inc.: Petition for Resolution of Disputed Issues Pursuant to Condition (30) of the SBC/Ameritech Merger Order. The docket has nothing to do with merger costs and savings.

It is clear that the Administrative Law Judges intended to terminate Docket No. 01-0128, entitled Illinois Commerce Commission On Its Own Motion vs Illinois Bell Telephone Company: Investigation of merger related costs and savings allocable to Illinois resulting from the SBC-Illinois Bell Telephone Company merger.

Accordingly, the Staff proposes the following replacement provisions:

(7) as a result of the approval of the Joint Proposal, the tracking, reporting and auditing requirements applicable to merger savings as a result of the Commission's order in Docket 98-0555 are eliminated and Docket 01-0128 0420 is hereby terminated;

...

IT IS FURTHER ORDERED that the tracking, reporting and auditing requirements applicable to merger savings as a result of the Commission's Order in Docket 98-0555 are eliminated and Docket 01-0128 0420 is hereby terminated

Proposed Order at 17.

Exception No. 4 The "Commission Analysis and Conclusion Should Contain Additional Findings of Fact

The third paragraph in the "Commission Analysis and Conclusion" section at page 14 of the Proposed Order appears to be incomplete. Accordingly, Staff offers the following language:

We also agree that all parties, including the Commission itself, will additionally benefit if existing tracking, reporting, auditing and audit review requirements can be eliminated. These processes, though necessary to an audit proceeding, have proved to be extremely burdensome, expensive, time-consuming and litigious. Though in theory the annual audit mechanism eventually will produce results that will result in merger savings being passed on to consumers, to date consumers have seen little few tangible benefits of such a process. The evidence regarding merger savings presented in this matter establishes a reasonable and appropriate amount of such savings that will be passed along to consumers. This will constitute an appropriate tangible benefit, as the Commission intended in its 98-0555 determinations.

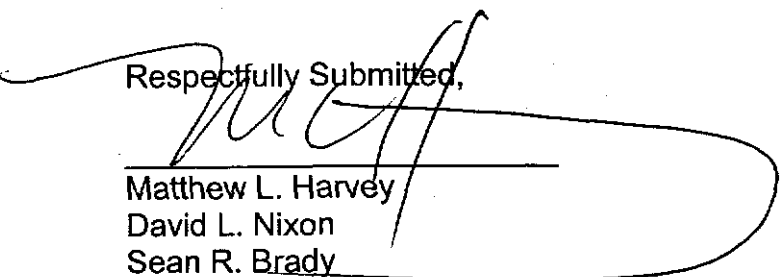
Exception No. 5 Miscellaneous Corrections Should Be Made

Staff also recommends the following minor corrections:

- Page 13, second line of "Commission Analysis and Conclusion." A word appears to be missing at the beginning of the second sentence. "We [some verb] that the Joint proposal..." Staff leaves it to the ALJs to interpose the correct verb.
- Page 14, third full paragraph, beginning with "McLeod has raised certain issues...." In the second sentence, "McLeod's" should be changed to "McLeod."
- Page 15, third paragraph under "2) Al's Motion to Strike", in the 6th line, "TELIRC" should be changed to "TELRIC."

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully Submitted,



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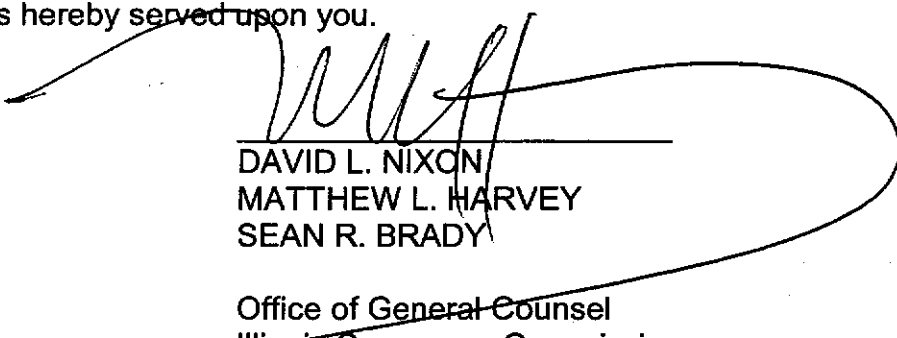
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Relief.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that we have on this 5th day of April, 2002, filed with the Chief Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois, the Brief on Exceptions of the Staff of the Illinois Commerce Commission, a copy of which is hereby served upon you.



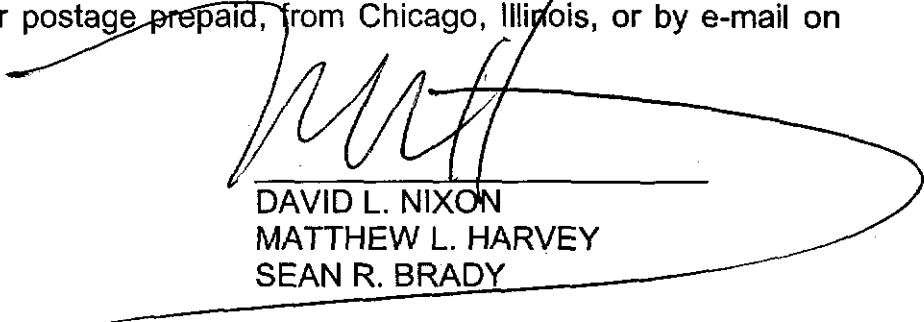
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the above Notice, together with copies of the document referred to therein, have been served upon the parties to whom the Notice is directed by U.S. mail, proper postage prepaid, from Chicago, Illinois, or by e-mail on this 5th day of April, 2002.



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